

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

JIMMIE McCALL

PLAINTIFF

VS.

**CITY OF MONTGOMERY and
MAYOR BOBBY BRIGHT,**

DEFENDANT

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2006 DEC 13 P 4:41

CASE NO.

RECEIVED
JIMMIE McCALL, CLK
MONTGOMERY DISTRICT COURT
MONTGOMERY, ALA

2:06CV1104-MEF

NOTICE OF REMOVAL OF CIVIL ACTION

To the Honorable Judges of the United States District Court for the Middle District of Alabama, Northern Division:

COME NOW Defendants, City of Montgomery and Mayor Bobby Bright and pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343, and hereby gives notice of the removal of the above-captioned civil action styled Jimmie McCall v. City of Montgomery and Mayor Bobby Bright, Civil Action No.: CV-2006-002816, from the Circuit Court from Montgomery County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division. As grounds for this removal, Defendants show unto the Court and alleges as follows:

1. Defendant City of Montgomery is a municipal corporation in Montgomery County, Alabama. Individual Defendant Arthur Baylor is over the age of nineteen (19) years and is an employee of City of Montgomery and is sued in his individual and official capacity.
2. The Plaintiff, Jimmie McCall is over the age of majority and a resident citizen of the State of Alabama.

3. Jimmie McCall v. City of Montgomery and Mayor Bobby Bright, Civil Action No.: CV-2006-002816, from the Circuit Court from Montgomery County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division.

4. This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331, 42 U.S.C. §1983, 28 U.S.C. §1343, and may be removed by Defendants pursuant to 28 U.S.C. §1441(b) and 28 U.S.C. §1443. Defendants remove this action pursuant to 28 U.S.C. §1441, 28 U.S.C. §1331, 28 U.S.C. §1343, 28 U.S.C. 1367 and 28 U.S.C. §1443.

5. In the Complaint filed in the Circuit Court of Montgomery County, Alabama on November 3, 2006 and served on Defendants on November 13, 2006, Plaintiff asserted that the Defendants City of Montgomery and Mayor Bobby Bright's actions were not reasonable related to the health, safety and welfare and were so unreasonable as to constitute an arbitrary and capricious interference with basic rights of private property and private property owners and in violation of the 14th Amendment of the United States Constitution in particular that the plaintiff is entitled to due process as it relates to the deprivation of his real property.

6. This notice of removal is timely filed with this Court within the thirty (30) day limitations set forth in 28 U.S.C. §1446(b). This action became removable on November 13, 2006, which is the date Defendants were served with the copy of Plaintiff's Complaint. This Court has supplemental jurisdiction over all other claims of the Plaintiff pursuant to 28 U.S.C. §1367.

7. This Notice of Removal is filed in this district and division pursuant to 28 U.S.C. §1446(a) and 28 U.S.C. §1443 as the court for the United States for the district and division within which such action is pending. Venue is proper pursuant to 28 U.S.C. §1391(b).

8. A copy of the Summons and Complaint served upon Defendant in said action and contained in the file of the Circuit Court of Montgomery County, Alabama, in said action is attached hereto as Exhibit "A" and made a part hereof in accordance with 28 U.S.C. §1446(a).

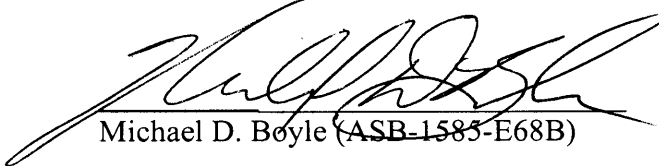
9. In accordance with 28 U.S.C. §1446(d), a true and correct copy of this notice of removal is being filed with the Clerk of the Circuit Court of Montgomery County, Alabama, and written notice thereof has been given to all adverse parties. A copy of the notice of filing of notice of removal is attached hereto as Exhibit "B".

10. Pursuant to 28 U.S.C. §1446(b), a true and correct copy of this notice of removal is being filed with the Circuit Court of Montgomery County, Alabama.

11. By filing this notice of removal, this Defendant does not waive any defense that may be available to the Defendant.

WHEREFORE, Defendants file this notice of removal so as to effect the removal of this action from the Circuit Court of Montgomery County, Alabama, to this court. Defendants pray this Honorable Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause so that all proceedings that may have been had in said Circuit Court are removed to this Court. Defendants further pray that the removal of this cause to this court should be effected and that no further or other proceedings shall be had with respect to this cause in the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this the 13th day of December, 2006.



Michael D. Boyle (ASB-1585-E68B)

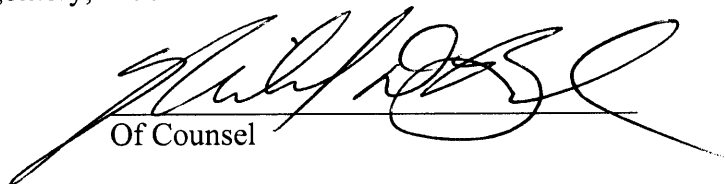
OF COUNSEL:

Legal Department
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111
(334) 241-2050
(334) 241-2310 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing to the attorneys listed below by hand delivery or by placing a copy of same in the United States Mail, postage prepaid, this 13th day of December, 2006:

Norman Hurst, Jr.
462-A Sayre Street
Montgomery, Alabama 36104


Of Counsel

Rec - 11-13-06 D.P.

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS -CIVIL- NOV 13 2006 CITY ATTORNEY	Case Number CV 06-2816
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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Plaintiff ZIMMERMAN, MELODY v. Defendant CITY OF MONTGOMERY

NOTICE TO CITY ATTORNEY, 103 NORTH PEARL ST, MONTGOMERY, AL 36104

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY NORMAN FURST WHOSE ADDRESS IS 462 SQUIRE ST, MONTGOMERY, AL 36104

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

☐ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.

☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.

Date 11-6-06 Melissa Littenour Clerk/Register By: BW

☐ Certified Mail is hereby requested.

2006 NOV - 3 PM 3:29
FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY

Plaintiff's/Attorney's Signature _____

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____ (Date)

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)

Date _____ Server's Signature _____

Address of Server _____ Type of Process Server _____

EXHIBIT

A

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JIMMIE McCALL
Plaintiff,

v.

THE CITY OF MONTGOMERY and
MAYOR BOBBY BRIGHT,
Defendants.

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*
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* CASE NO.: CV 06-2816

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2006 NOV -3 PM 3:29

AN APPEAL FROM THE MONTGOMERY CITY COUNCIL PURSUANT TO CODE OF
ALABAMA AND A VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTION AND OTHER RELIEF

COMES NOW, Jimmie McCall, by and through their attorney, Norman Hurst Jr., and pursuant to Section 6-6-223 of the Code of Alabama. This is an action for injunctive relief, in favor of the plaintiffs. In addition, a permanent injunction is sought on behalf of the Plaintiffs in the form of issuing a permanent injunction prohibiting Defendants, its agents, servants, or employees or anyone acting in concert, from filing a resolution assessing the cost of abatement of unsafe structures pursuant to Ordinance No. 10-2001 via Section 11-48-48, Code of Alabama, 1975, or from taking any type action against Plaintiffs in order to maintain the status quo and prevent the Plaintiffs from suffering irreparable harm and injury pending the outcome of this lawsuit, and shows this honorable court as follows:

PARTIES

1. The Plaintiff, Jimmie McCall, is over the age of 19 and is a resident of Montgomery, County, Alabama.

2. The City of Montgomery is a municipal corporation, incorporated pursuant to the laws of the State of Alabama.
3. The defendant, Bobby Bright, is sued in his official capacity as Mayor of the City of Montgomery, Alabama.

FACTS

4. On or about, November 1, 2006 the Plaintiff, Jimmie McCall learned through his brother, a demolition contractor, that real property owned by the plaintiff located at 3118 Woodley Road in the corporal limits of the City of Montgomery was slated for demolition. (See Attachment "A")
5. That the Plaintiff, Jimmie McCall has not received any notice as in regards to this demolition or a chance to be heard concerning this matter in violation of the Constitution of the United States in particular the 14th Amendment as it relates to the deprivation of his property rights.

CAUSE OF ACTIONS

6. The plaintiff, repeats, realleges, and incorporate by reference the proceeding paragraphs as fully set forth within.
7. The City of Montgomery actions were not reasonable related to the health, safety and welfare and were so unreasonable as to constitute an arbitrary and capricious interference with basic rights of private property.
8. That ordering the demolition of plaintiffs property that is structurally sound and does not pose a threat to the health, safety and welfare is an arbitrary and capricious interference with the basic rights of private property owners.
9. That plaintiff had valid permits from the City of Montgomery to perform work on his

property and was performing the same when he was informed by his brother that his property was slated for demolition. (See Attachment "B")

10. That said actions of the City of Montgomery are void because of their interference and failure to show how said structure is unsafe.

COUNT II


11. The plaintiff, repeats, realleges, and incorporate by reference the proceeding paragraphs as fully set forth within.
12. That the actions of the City of Montgomery or in violation of the 14th Amendment of the United States Constitution in particular that the plaintiff is entitled to due process as it relates to the deprivation of his real property.
13. That minimal due process would entitle the plaintiff to a notice and right to be heard before a finding of fact was made concerning the safety of his property.
14. That the City of Montgomery has failed to provide notice concerning the structure denying plaintiff of his constitutional rights.
15. That the demolition as ordered by the City of Montgomery, and the Mayor in his official capacity, will cause the Plaintiffs to suffer irreparable and irreversable financial harm. A temporary restraining order and preliminary injunction are necessary to halt Defendants and the Mayor as an officer of the City of Montgomery, from illegally, improperly and wrongfully demolishing the plaintiff's property and to preserve the status quo pending the final hearing in the cause and, upon a final hearing, the Plaintiffs are entitled to a permanent injunctive relief. Further is likely that plaintiff will prevail on the merits making a temporary restraining order warranted in this matter.

WHEREFORE, the plaintiffs, ask this honorable court to afford him any equitable remedies

it may deem necessary and proper and to issue a temporary restraining order and a permanent injunction prohibiting Defendants, its agents, servants, or employees, from demolishing their property.

Further the Defendant requests damages.

Done this the 3rd day of November 2006.



Norman Hurst Jr. (HUR016)
462 Sayre Street
Montgomery, Alabama 36104
(334) 269-6449

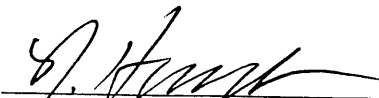


Jimmie McCall

CERTIFICATE OF SERVICE

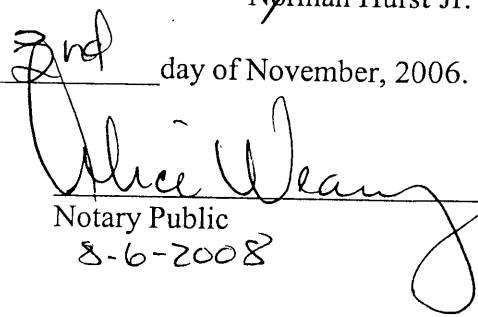
I hereby certify that I have this date of the 3rd day of November 2006, served a copy of the above and foregoing Appeal on by placing a copy of same in the United States Mail, postage prepaid and addressed to his regular mailing address.

The City of Montgomery
City Attorney
P.O. Box 1111
Montgomery, Alabama 36101



Norman Hurst Jr.

Sworn and subscribed to me this the 3rd day of November, 2006.



Notary Public
8-6-2008





City of Montgomery, Alabama

Dorian D. Brunson
Inspections Department

Booby N. Bright
Mayor

Charles V. Jinnight—President
James A. Nuckles—Pro Tem
Wilhe Cook

Cornelius Calhoun
Tina Head
Janet Thomas May

Glen O. Pruitt, Jr.
Martha Romy
Jim Spear

October 20, 2006

BID NOTICE HOUSING CODE DIVISION

The City of Montgomery is accepting sealed bids for the demolition of the structure(s) listed on the attachment. Please indicate your bid for each individual address.

All bids are to be submitted to the Chief Housing Code Inspector's Office, located in City Hall, Room 121P, no later than 12:00 noon Friday, November 3, 2006.

The City of Montgomery reserves the right to refuse any and all bids, and the right to rebid this project. Bids will be void after sixty (60) days.

Each contractor **MUST** submit proof of insurance coverage to the Chief Housing Codes Inspector. Contractors who do not have insurance will be allowed to bid, but will not be awarded a contract until insurance has been obtained.

Each contractor will notify ALL utility companies to disconnect utility service from structure(s).

When completed, the lot will be left reasonably smooth, free of all building material, weeds, trash, and debris. All building material, trash and debris must be disposed of at an authorized landfill.

Contractor will ensure that all building inspections are completed and a demolition permit is on file in the Building Division located at City Hall room 134 prior to the commencement of work.

Contractors must submit proof of the existence of hazardous materials in all building structure(s) (lead based paint, asbestos and petroleum materials, etc.). If hazardous materials are found, contractors must submit, with their bids, an acceptable method of abating and disposing of these materials and with bids, the cost thereof. The abatement and disposal of hazardous materials must comply with Federal, State and City laws and regulations.

Contractor **MUST** sign and include BUSINESS LICENSE NUMBER on Bid Forms; otherwise the bid(s) will be rejected. Also, all invoices from the successful bidder must be signed and include the Business License Number.

Contractors Signature

Eddie Hill, Jr.
Eddie Hill, Jr.

Chief Housing Code Inspector

Business License No.

**PLAINTIFF'S
EXHIBIT**

A



City of Montgomery, Alabama

Dorian D. Brunson
Inspections Department

Bobby M. Bright
Mayor

Charles W. Junright—President
James L. Nuckies—Pro tem
Willie Cook

Cornelius Calhoun
Tim Head
Janet Thomas May

Glen O. Pruitt, Jr.
Martina Roby
Jim Spear

Demolition Bids For

Address	Bids
19 Houser St	\$
645 Smythe St	\$
3118 Woodley Rd	\$
2325 Starr St	\$

* Special Provisions:

Notes: Contractors that damage sidewalks or curb and gutters are responsible for the repair of damages to Engineering Department Specifications.

There will be no free dumping at the City Of Montgomery Landfill for demolition work done on the address listed above.

Please indicate on your bid sheets the presence of any hazardous materials and include the cost of abatement in your bid.

Demolition work MUST be completed no later than December 8, 2006.

CERTIFIED MAIL

P. O. Box 111 • Montgomery, Alabama 36101-0111 • Phone (205) 241-1000 • Fax (205) 241-1020

CITY OF MONTGOMERY

Inspection Services

Date

House Number:

Street:

General Location:

Contractor:

Parcel Number:

Sheet:

PJ:

Assessed Description:

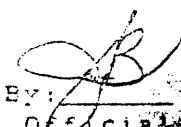
Owners Name: MCCALL JIMMIE JR


PERMISSION GRANTED TO: MCCALL JIMMIE JR

ERECT A 18.0'X 33.6' ADDITION TO FRONT OF DWELLING TO BE USED FOR
BEDROOM, BATH AND 34.6'X 40' 7" BEDROOM/BATH TO SIDE ALSO 34.6'X 14'
GARPORT TO REAR W A 18.0'X 5.3' BREEDWAY AND 7.0'X 10' SIDE PORCH.
FOUNDATION & FRAMING INSPECTION WILL BE REQUIRED. TO MEET ALL
APPLICABLE CODES.

PLUMBING: R753	LEFT YARD: 10	ESTIMATED COST:	90,000.00
AD ADJ:	RIGHT YARD: 10	ELECTRICAL: X	PENALTY FEE:
OWNER:	FRONT YARD: 30	PLUMBING: X	BUILDING FEE:
CERT OF	REAR YARD: 30	MECHANICAL: X	LICENSE FEE:
OCCUPANCY:			TOTAL FEE:
ASSESSMENT:			CASH: CHECK: X

This permit must be posted. This permit void unless
started within 6 months. This permit issued subject
to building code zoning ordinances, and other
applicable codes and/or ordinances.

Dory Brunson By: 
Chief Building Official

SIGNATURE 

DATE 12-28-07

FOR OFFICE USE

ZONE P753

PLAT SHEET

BD. OF ADJUSTMENT

DEVELOPMENT PLAN

PERMIT NUMBER 021885

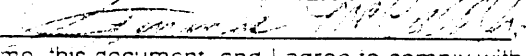
DATE 12-28-07

APPROVED 

BUILDING LINE

DRAW IN ALL STRUCTURES AND SHOW
DISTANCES FROM ALL LOT LINES.

APPLICANT'S RESPONSIBILITY

I, , the Applicant, hereby certify that I have carefully read, or have had read
to me, this document, and I agree to comply with and be bound by its terms and conditions:

1. APPLICANT SOLELY RESPONSIBLE:

The Applicant understands and appreciates, that he/she is solely responsible for ensuring that the proposed
construction/renovation fully complies with the City of Montgomery Zoning Ordinance and Building Code Regulations, any
other state or local laws pertaining to this type of construction, all relevant plat restrictions and covenants and/or
subdivision/homeowner's association restrictions and covenants, and any other restrictions or covenants applicable to this
property that may be found in the public records of Montgomery County. *For this reason, you are strongly urged to
obtain approval from the appropriate subdivision/homeowner's association before you apply for a permit and
begin construction. Failure to do so could result in legal action by the subdivision property owner's association
to enforce the restrictions or covenants. The City of Montgomery does not warrant the
determine if an application for a building permit is in compliance with said restriction.*

2. CITY OF MONTGOMERY ASSUMES NO RESPONSIBILITY:

The City of Montgomery in no way warrants, in approving an application for a Building Permit
construction/renovation to be undertaken is in compliance with and satisfies any plat, subdivi-
association restrictions or covenants, or any other state or local law governing this type of construction.

3. VOIDING OF BUILDING PERMIT BY CITY OF MONTGOMERY

This Building Permit has been issued on the basis of the information provided. If at any time the City of Montgomery

**PLAINTIFF'S
EXHIBIT**

B

Inspection Services

Date

CITY OF MONTGOMERY

House Number:

General Location:

Contractor:

Parcel Number:

Assessed Description:

Street:

Sheet:

Owners Name: MICHAEL HANNAH

PERMISSION GRANTED TO: OWNER
 ERECT A 6" BRICK COLUMN BUILT FROM FENCE ALONG FRONT
 PROPERTY LINE. BOARD OF ADM APPROVED TO COME UP TO
 PROPERTY LINE. TO MEET ALL APPLICABLE CODES

ZONING: R75S
 BD ADJ: 54-155

LP NBR:
 CERT OF
 OCCUPANCY:
 EASEMENT:

LEFT YARD:
 RIGHT YARD:
 FRONT YARD:
 REAR YARD:

ELECTRICAL:
 PLUMBING:
 MECHANICAL:

ESTIMATED COST:
 PENALTY FEE: 11.00
 BUILDING FEE: 11.00
 LICENSE FEE: 22.00
 TOTAL FEE:
 CASH: X CHECK:

This permit must be posted. This permit void unless
 started within 6 months. This permit issued subject
 to building code, zoning ordinances, and other
 applicable codes and/or ordinances.

Dory Brunson By: *[Signature]*
 Chief Building Official

SHOWN ARE ACCURATE
 CORRECT AND DISTANCES

SIGNATURE

DATE

FOR OFFICE USE

ZONE R75S

PLAT SHEET

BD. OF ADJUSTMENT

DEVELOPMENT PLAN

PERMIT NUMBER 06 752

DATE 1-11-02

APPROVED

BUILDING LINE

DRAW IN ALL STRUCTURES AND SHOW
 DISTANCES FROM ALL LOT LINES.

APPLICANT'S RESPONSIBILITY

I, *[Signature]*, the Applicant, hereby certify that I have carefully read, or have had read
 to me, this document, and I agree to comply with and be bound by its terms and conditions:

1. APPLICANT SOLELY RESPONSIBLE:

The Applicant understands and appreciates, that he/she is solely responsible for ensuring that the proposed
 construction/renovation fully complies with the City of Montgomery Zoning Ordinance and Building Code Regulations, any
 other state or local laws pertaining to this type of construction, all relevant plat restrictions and covenants and/or
 subdivision/homeowner's association restrictions and covenants, and any other restrictions or cove
 property that may be found in the public records of Montgomery County. For this reason, you are s
 obtain approval from the appropriate subdivision/homeowner's association before you apply
 begin construction. Failure to do so could result in legal action by the subdivision property ow
 to enforce the restrictions or covenants. The City of Montgomery does not warrant that, or as
 determine if, an application for a building permit is in compliance with said restrictions and/or

2. CITY OF MONTGOMERY ASSUMES NO RESPONSIBILITY:

The City of Montgomery in no way warrants, in approving an application for a Building Permit, that the
 construction/renovation to be undertaken is in compliance with and satisfies all applicable laws, codes, and

PLAINTIFF'S
 EXHIBIT

B

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

JIMMIE McCALL

PLAINTIFF

VS.

CITY OF MONTGOMERY

DEFENDANT

CASE NO. CV-06-2816

NOTICE OF FILING NOTICE OF REMOVAL

TO: Melissa A. Rittenour
Circuit Clerk
251 S. Lawrence Street
Montgomery, AL 36104

Norman Hurst, Jr.
462-A Sayre Street
Montgomery, Alabama 36104

Please take notice that Defendants, City of Montgomery and Mayor Bobby Bright sued in his official capacity, have on this date filed a Notice of Removal, a true and correct copy of which is attached hereto, in the office of the clerk of the United States District Court for the Middle District of Alabama, Northern Division, at Montgomery, Alabama.

Respectfully submitted this the 13th day of December, 2006.


Michael D. Boyle (BOY032)

OF COUNSEL:

Legal Department
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111
(334) 241-2050
(334) 241-2310 (fax)

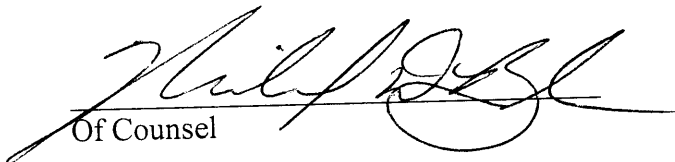
EXHIBIT

B

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing to the attorneys listed below by hand delivery or by placing a copy of same in the United States Mail, postage prepaid, this 13th day of December, 2006:

Norman Hurst, Jr.
462-A Sayre Street
Montgomery, Alabama 36104


Of Counsel